

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: March 16, 2005

Division: Engineering

Bulk Item: Yes X No

Department: Engineering

Staff Contact Person: David S. Koppel, PE
County Engineer

AGENDA ITEM WORDING: Approval of a contract with B & L Beneway Inc. in the amount of \$97,254.00 for Duck Key Drainage Improvements.

ITEM BACKGROUND: On January 26, 2005 four bids were received: (1) B & L Beneway Inc. in the amount of \$97,254.00; (2) BAT Construction, Inc. in the amount of \$122,064.80; (3) Key Iron Works, Inc. in the amount of \$148,700.00; and (4) Charley Toppino & Sons in the amount of \$149,208.00.

PREVIOUS RELEVANT BOCC ACTION: The BOCC approved the Seven Year Roadway and Bicycle Plan on December 17, 2003.

CONTRACT/AGREEMENT CHANGES: New Contract

STAFF RECOMMENDATIONS: Approval as stated above.

TOTAL COST: \$97,254.00

BUDGETED: Yes X No

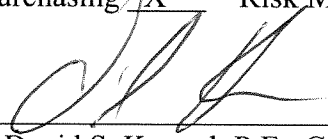
COST TO COUNTY: \$97,254.00

SOURCE OF FUNDS: Constitutional Gas Tax

REVENUE PRODUCING: Yes No X **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty X OMB/Purchasing X Risk Management X

DIVISION DIRECTOR APPROVAL:


David S. Koppel, P.E., County Engineer

DOCUMENTATION: Included X Not Required

DISPOSITION:

AGENDA ITEM #

ADMINISTRATIVE SERVICES DEPARTMENT

**PURCHASING OFFICE
TABULATION SHEET**

OPEN DATE: JANUARY 26, 2005 AT 11:00 AM

TITLE: DUCK KEY DRAINAGE IMPROVEMENTS

RESPONDENT	RFQ RECEIVED
Charley Toppino & Sons	\$149,208.00
B & L Beneway, Inc.	\$97,254.00
Key Iron Works, Inc.	\$148,700.00
BAT Construction, Inc.	\$122,064.80

Bid Committee Present: Lisa Ernst Cherry and Carlos Victores - Purchasing Office
Members of the Public Present: Phil Braeunig - Bat Construction & Ed Toppino, Jr. - Charley Toppino & Sons

I hereby certify that this is a true and correct copy of said bid opening and that all bidders listed above have been checked against the State of Florida Convicted & Suspended Vendor listings. All bids listed above were received by the date and time specified.

Bid Opened By: Lisa Ernst Cherry, Purchasing Supervisor

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with:	B & L Beneway, Inc.	Contract #	
		Effective Date:	Upon Execution
		Expiration Date:	90 days after notice of commencement

Contract Purpose/Description:

Approval to award bid and enter into a contract with B & L Beneway Inc. in the amount of \$97,254.00 for Duck Key drainage improvements

Contract Manager: David S. Koppel, PE 4426 Engineering / #1
(Name) (Ext.) (Department/Stop #)

for BOCC meeting on March 16, 2005 Agenda Deadline:

CONTRACT COSTS

Total Dollar Value of Contract: \$ 97,254.00 Current Year Portion: \$ _____
 Budgeted? Yes ☒ No ☐ Account Codes: 22506-560630-R04300-530340
 Grant: \$ _____
 County Match: \$ _____

ADDITIONAL COSTS

Estimated Ongoing Costs: \$_____/yr For: _____
(Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	2/9/05	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>[Signature]</i>	2/9/05
Risk Management	2-7-05	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<i>[Signature]</i>	2-7-05
O.M.B./Purchasing		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<i>[Signature]</i>	2/4/05
County Attorney	2/7/5	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<i>[Signature]</i>	2/08/05

Comments: _____

Section 00500

Standard Form of Agreement Between Owner and Contractor

where the basis of payment is a STIPULATED SUM

AGREEMENT

made as of the _____ day of _____ in the year of _____
(In Words, indicate day, month and year.)

BETWEEN the Owner: Monroe County Board of County Commissioners
(Name and address) 500 Whitehead Street
Key West, Florida 33040

and the Contractor: B & L Beneway, Inc.
(Name and address) 1865 Overseas Highway
Marathon, Florida 33050

For the following Project:

**Duck Key Drainage Improvements
Duck Key
Monroe County, Florida**

Scope: Installation of two injection wells and drainage improvements.

The Construction Manager is: Monroe County Engineering Department
1100 Simonton Street
Second Floor – Room 2-216
Key West, Florida 33040

The Engineer is: Thomas M. Timmins, P.E.
Matthew Fowler, Architect
21 Ships Way
Big Pine Key, Florida 33043

The Owner and Contractor agree as set forth below.

ARTICLE 1

The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement: these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

ARTICLE 2

The Work of this Contract

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

Scope of Work as specified in the Project Manual for this project, Section 00300.

ARTICLE 3

Date of Commencement and Substantial Completion

3.1 The date of commencement is the date from which the Contract Time of Paragraph 3.2 is measured, and shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

Ten (10) calendar days from Notice to Proceed unless otherwise agreed in writing by Contractor and Construction Manager.

Unless the date of commencement is established by a notice to proceed issued by the Owner, the Contractor shall notify the Owner, through the Construction Manager, in writing not less than five days before commencing the Work.

3.2 The Contractor shall achieve Substantial Completion of the entire Work not later than
Ninety (90) Days after the Date of Commencement

subject to adjustments of the Contract Time as provided by the Contract Document

LIQUIDATED DAMAGES

Liquidated damages will be based on the Substantial Completion Date for all work, modified by all approved extension in time as set forth by the Construction Manager's signature of approval on the Certificate of Substantial Completion. The liquidated damages table below shall be utilized to determine the amount of liquidated damages.

<u>CONTRACT AMOUNT</u>	<u>FIRST 15 DAYS</u>	<u>SECOND 15 DAYS</u>	<u>31ST DAY & THEREAFTER</u>
Under 50,000.00	\$50.00/DAY	\$100.00/DAY	\$250.00/DAY
\$50,000.00-\$99,999.00	100.00/DAY	200.00/DAY	750.00/DAY
\$100,000.00-499,999.00	200.00/DAY	500.00/DAY	2,000.00/DAY
\$500,000.0 and Up	500.00/DAY	1,000.00/DAY	3,500.00/DAY

The Contractor's recovery of damages, and sole remedy for any delay caused by the Owner shall be an extension of time on the Contract.

ARTICLE 4

Contract Sum

- 4.1 The owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum of **NINETY-SEVEN THOUSAND TWO HUNDRED FIFTY-FOUR AND NO/100 Dollars (\$97,254.00)** subject to additions and deductions as provided in the Contract Documents.
- 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner: None
- 4.3 Unit prices, if any, are as follows: As specified in Section 00110.

ARTICLE 5 **Progress Payments**

- 5.1 Based upon Applications for Payment submitted by the Contractor to the Construction Manager, and upon Project Applications and Certificates for Payment issued by the Construction Manager and Architect, the Owner shall make progress payments on account of the Contract Sum to the contractor as provided below and elsewhere in the Contract Documents.
- 5.2 The period covered by each Application for payment shall be one calendar month ending on the last day of the month, or as follows:
- 5.3 Provided an Application for Payment is submitted to the Construction Manager not later than the First day of a month, the Owner shall make payment to the Contractor not later than the Twenty-first day of the Same month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment shall be made by the Owner not later than Twenty days after the Construction Manager receives the Application for Payment.
- 5.4 Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager or Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.
- 5.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.
- 5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
- 5.6.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of Ten percent (10%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included in applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager. When both additions and credits covering related Work or substitutions are involved in a change the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

DUCK KEY DRAINAGE IMPROVEMENT

5.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Ten percent (10%):

5.6.3 Subtract the aggregate of previous payments made by the Owner; and

5.6.4 Subtract amounts, if any, for which the Construction Manager or Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of the General conditions.

5.7 The progress payment amount determined in accordance with Paragraph 5.6 shall be further modified under the following circumstances:

5.7.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to Ninety percent (90%) of the Contract Sum, less such amounts as the Construction Manager recommends and the Architect determines for incomplete Work and unsettled claims; and

5.7.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Subparagraph 9.10.3 of the General Conditions.

5.8 Reduction or limitation of retainage, if any, shall be as follows: None

ARTICLE 6 **Final Payment**

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in Subparagraph 12.2.2 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment; and (2) a final Project Certificate for Payment has been issued by the Construction Manager and Architect: such final payment shall be made by the Owner not more than 20 days after the issuance of the final Project Certificate for Payment, or as follows:

ARTICLE 7 **Miscellaneous Provisions**

7.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

N/A

7.3 Temporary facilities and services:

As listed in Table of Contents, Section 00001 of the Project Manual for this project.

7.4 Monroe County's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Board of County Commissioners.

7.5 A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public

work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

7.6 The following items are part of this contract:

a) Contractor shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Each party to this Agreement or their authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four years following the termination of this Agreement. If an auditor employed by the County or Clerk determines that monies paid to Contractor pursuant to this Agreement were spent for purposes not authorized by this Agreement, the Contractor shall repay the monies together with interest calculated pursuant to Sec. 55.03, FS, running from the date the monies were paid to Contractor.

b) Governing Law, Venue, Interpretation, Costs, and Fees: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State.

In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the County and Contractor agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

c) Severability. If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and Contractor agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

d) Attorney's Fees and Costs. The County and Contractor agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, courts costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

e) Binding Effect. The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and Contractor and their respective legal representatives, successors, and assigns.

f) Authority. Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.

g) Claims for Federal or State Aid. Contractor and County agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.

h) Nondiscrimination. County and Contractor agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. County or Contractor agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss.1681-1683, and 1685-

1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Chapter 13, Article VI, which prohibits discrimination on the basis of race, color, sex, religion, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; 11) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

i) **Covenant of No Interest.** County and Contractor covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

j) **Code of Ethics.** County agrees that officers and employees of the County recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

k) **No Solicitation/Payment.** The County and Contractor warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the Contractor agrees that the County shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

l) **Public Access.** The County and Contractor shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and Contractor in conjunction with this Agreement; and the County shall have the right to unilaterally cancel this Agreement upon violation of this provision by Contractor.

m) **Non-Waiver of Immunity.** Notwithstanding the provisions of Sec. 286.28, Florida Statutes, the participation of the County and the Contractor in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.

n) **Privileges and Immunities.** All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County, when performing their respective functions under this Agreement within the territorial limits of the County shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the County.

o) **Legal Obligations and Responsibilities: Non-Delegation of Constitutional or Statutory Duties.** This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the County, except to the extent permitted by the Florida constitution, state statute, and case law.

p) Non-Reliance by Non-Parties. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and the Contractor agree that neither the County nor the Contractor or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

q) Attestations. Contractor agrees to execute such documents as the County may reasonably require, to include a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement.

r) No Personal Liability. No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

s) Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

t) Section Headings. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

u) Special Conditions, if any are detailed in Section 01000 of the Project Manual for this Project

ARTICLE 8 **Termination or Suspension**

8.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

8.2 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.

Article 9 **Enumeration of Contract Documents**

9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

9.1.1 The Agreement is this executed Standard Form of Agreement between Owner and Contractor.

9.1.2 The General Conditions are the General Conditions of the Contract for Construction.

9.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated October 2004, and are as follows:

Document	Title	Pages
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As listed in Table of Contents, Section 00001 of the Project Manual for this project.

9.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 9.1.3, and are as follows:

As listed in Table of Contents, Section 00001 of the Project Manual for this project.

9.1.5 The Drawings are as follows, and are dated on each individual drawing unless a different date is shown below:

As listed in Table of Contents, Section 00001 of the Project Manual for this project.
Contract Drawings.

9.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
1	January 21, 2005	3

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

9.1.7 Other documents, if any, forming part of the contract Documents are as follows: **Monroe County Bid Form in Section 00110.**

This Agreement is entered into as of the day and year first written above and is executed in at least four original copies of which one is to be delivered to the Contractor, one each to the Construction Manager and Architect for use in the administration of the Contract, and the remainder to the Owner

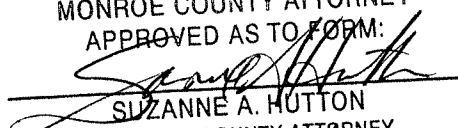
(SEAL)
Attest: DANNY L. KOLHAGE, Clerk

**BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA**

By: _____
Deputy Clerk

By: _____
Mayor/Chairman

Date _____

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 2/08/05

(SEAL)
Attest:

CONTRACTOR

By: _____

By: _____

Title: _____

Title: _____

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**END OF SECTION 00500**